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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ACTION WHOLESALE ELECTRIC
SUPPLY, INC.,

Plaintiff and Appellant,

v.

BAKER COLD STORAGE, INC.,

Defendant and Respondent.

B169609

(Los Angeles County
Super. Ct. No. BC276339)

APPEAL from a judgment of the Superior Court of Los Angeles County, Teresa Sanchez-Gordon, Judge. Reversed.

Keller, Weber & Dobrott, Coby N. Keller, Charles E. Weber, James E. Dobrott, Jr., and Jill Hunt for Plaintiff and Appellant.

Millar, Hodges & Bemis and Richard W. Millar, Jr., for Defendant and Respondent.

INTRODUCTION

In this action for foreclosure on a mechanic's lien, plaintiff Action Wholesale Electric Supply, Inc. purports to appeal "from the Motion For Summary Judgment . . . in favor of Defendant BAKER COMMODITIES, Inc., a California corporation also doing business as BAKER COLD STORAGE, Inc., a California corporation."¹ We liberally construe this facially deficient notice of appeal to be a premature notice of appeal from the judgment entered in favor of defendant Baker Cold Storage, Inc. following the grant of its motion for summary judgment. (Cal. Rules of Court, rule 1(a).) We reverse the judgment.

FACTS

On June 7, 2000, Baker Cold Storage, Inc. (Baker) contracted with Controlled Environments Construction, Inc. (CEC) to build a cold storage facility at 4100 Bandini Boulevard in Los Angeles. Tokai Bank, which later was succeeded by Bank of the West, provided the construction loan. CEC subcontracted with Golden West Electric (GWE) to perform electrical work on the project. Like the general contract, the subcontract identified 4100 Bandini as the project site and Baker as the owner of the property. Plaintiff Action Wholesale Electric Supply, Inc. (Action) supplied GWE with electrical materials, equipment and supplies that GWE incorporated into Baker's cold storage project.² The cold storage facility was completed in March 2002.

Action recorded a mechanic's lien for labor, services, equipment and/or materials furnished for a work of improvement upon real property in Los Angeles described as "BAKER COMMODITIES, INC. (BAKER COLD STORAGE)" at 4020 Bandini

¹ Baker Commodities, Inc. is a Delaware corporation.

² A copy of the written contract between GWE and Action, if any, does not appear in the record on appeal.

Boulevard. The lien identified Baker Commodities, Inc. (Baker Commodities) as the owner of 4020 Bandini. The outstanding principle amount owed to Action for materials, equipment and supplies that it provided to GWE for use in the Baker cold storage project was listed as \$116,795.62 together with interest.³

PROCEDURAL HISTORY

On June 24, 2002, Action filed this action for foreclosure of its mechanic's lien against Baker Commodities (which it erroneously alleged was doing business as Baker), CEC and the construction lender, none of which is a party to this appeal. Action alleged that 4020 Bandini Boulevard was the property to be foreclosed upon and that Baker Commodities was the owner of the property. The mechanic's lien was attached to the complaint. On November 15, pursuant to Code of Civil Procedure section 474, plaintiff filed an amendment to complaint, naming Baker in place and stead of Doe defendant 1.

Baker subsequently filed a motion for summary judgment. Baker argued that since the recorded mechanic's lien did not encumber property that it owned, namely 4100 Bandini, and the time to record a lien against its property had long since expired, Action had no direct action against it.

Baker Commodities, along with CEC and the lender, filed a separate motion for summary judgment. These defendants argued that there was no basis upon which Action could enforce a lien against Baker Commodities' property, in that no improvement or work had been performed at 4020 Bandini.

Prior to the hearing on defendants' motions for summary judgment, Action moved for leave to file a first amended complaint to correct, among other things, the description of the property subject to Action's mechanic's lien from 4020 Bandini to 4100 Bandini.

³ Additional facts will be incorporated into the legal discussion below where relevant.

The trial court granted the motion and Action's first amended complaint was deemed filed.

With respect to the motion for summary judgment filed by Baker Commodities, CEC and Bank of the West, the parties stipulated that the motion be granted and that judgment be entered. As explained in the stipulation, Action did not oppose this particular motion since, by its first amended complaint, it "was seeking to impress a Mechanic's Lien on property owned by Baker . . . at 4100 Bandini Boulevard and not upon the property owned by Baker Commodities . . . at 4020 Bandini Boulevard."

The judgment entered on July 18, 2003 decreed that Action take nothing from Baker Commodities, CEC and Bank of the West "and that any mechanic's lien against the property of Baker Commodities, Inc. commonly known as 4020 Bandini Boulevard, Los Angeles, California 90023 shall be released and discharged."

At the hearing on Baker's motion for summary judgment held on July 28, the trial court granted the motion. The court reasoned that inasmuch as Action obtained a mechanic's lien on the wrong property and the lien could no longer be reformed or amended, the lien was invalid and could not be foreclosed. The judgment subsequently entered in favor of Baker released and discharged any purported mechanic's lien which purported to be against the real property commonly known as 4100 Bandini Boulevard and owned by Baker.

CONTENTION

Action contends the trial court erred in granting Baker's motion for summary judgment. For the reasons that follow, we agree and reverse the judgment.

DISCUSSION

Standard of Review

We review the summary judgment de novo to determine if Baker was entitled to judgment as a matter of law. (*Leep v. American Ship Management, L.L.C.* (2005) 126 Cal.App.4th 1028, 1036.)

Analysis

Simply stated, “[t]he property subject to a mechanics’ lien is that upon which the claimant has bestowed labor or furnished materials or appliances or leased equipment. A mechanics’ lien attaches to the work of improvement and the land on which it is situated . . . if at the commencement of the work or of the furnishing of the materials for the same, the land belonged to the person who caused such work of improvement to be constructed.” (13 Cal. Real Estate Law and Practice (2005) § 451.14, pp. 451-26.1 to 451-26.2; accord, Civ. Code, §§ 3110, 3128.)

A mechanic’s lien or claim of lien must contain (1) a statement of the claimant’s demand minus credits and offsets, (2) the name of the owner or reputed owner, (3) a general statement of the type of labor, services, equipment, or materials supplied by the claimant, (4) the name of the person who employed the claimant or to whom the claimant furnished labor, services, equipment or materials, and (5) a description of the property sought to be charged with the lien that is sufficient to permit its identification. (Civ. Code, § 3084.) The determination whether the claimant has complied substantially with these statutory requirements is a factual question to be made by the court as a matter of equity. (*Distefano v. Hall* (1963) 218 Cal.App.2d 657, 678.)

In its mechanic’s lien, Action made a partial mistake in describing the property subject to the lien. To the extent the claim describes that property as “BAKER COLD STORAGE,” it is correct. To the extent it describes that property as belonging to Baker Commodities, with an address of 4020 Bandini, it is wrong.

Civil Code section 3261 provides, however, that “[n]o mistake . . . in the description of the property against which the lien is recorded, shall invalidate the lien, unless the court finds that such mistake . . . was made with the intent to defraud, or that an innocent third party, without notice, direct or constructive, has since the claim was recorded become the bona fide owner of the property, and that the notice of claim was so deficient that it did not put the party on further inquiry in any manner.” (Accord, *American Transit Mix Co. v. Weber* (1951) 106 Cal.App.2d 74; *Howard A. Deason & Co. v. Costa Tierra Ltd.* (1969) 2 Cal.App.3d 742.) Stated otherwise, “[e]rrors in the description [of property in a mechanic’s lien claim] may be disregarded if identification of property is otherwise sufficient, providing there is no fraud and no one is misled by description.” (*Borello v. Eichler Homes, Inc.* (1963) 221 Cal.App.2d 487, 492; see also *American Transit Mix Co., supra*, 106 Cal.App.2d 74 and *Bothum v. Kreis* (1929) 101 Cal.App. 683; but see *Hayward Lumber & Investment Co. v. Pride of Mohave Mining Co.* (1941) 43 Cal.App.2d 146; *Hogan v. Bigler* (1908) 8 Cal.App. 71.)

In opposition to Baker’s motion for summary judgment, Action presented evidence establishing that Baker is a wholly owned subsidiary of Baker Commodities. Although Baker does not use, and has never used, any portion of 4020 Bandini for its business operations, the California Secretary of State currently lists Baker’s address as 4020 Bandini Boulevard. During construction, Baker conducted its business administration from 4020 Bandini and CEC submitted invoices to that location.

Mitchell Alan Ebright (Ebright) is an officer of Baker and Baker Commodities. He also is the general counsel for Baker with the responsibility of maintaining Baker’s corporate books and records. When Ebright received Action’s mechanic’s lien, he believed that it corresponded to a preliminary 20-day notice Action previously had filed. At some point in the process, Ebright realized “that the wrong property had been noticed and liened.” He learned from the owner of CEC that Action had been the electrical supplier for the 4100 Bandini project. Ebright discussed Action’s misidentification of the project property in its lien as 4020 Bandini, as opposed to 4100 Bandini, with the owner of CEC and questioned its validity.

In this case, there is no fraud and a third party has not been misled by the error in the description of the property subject to the lien. Ebright, an attorney, knew that Action was the electrical supplier for Baker's cold storage project. CEC had instructed GWE to utilize the 4020 Bandini address for purposes of the preliminary notice and the mechanic's lien. GWE, in turn, instructed Action to do the same. Although the lien erroneously reflected Baker's mailing address rather than the actual address of the cold storage facility, the property charged with the lien was properly described in part as "BAKER COLD STORAGE." This partially correct description was sufficient to allow identification of the property subject to the lien and to put Baker "on further inquiry."⁴ (Civ. Code, § 3261.)

Action also mistakenly listed Baker Commodities as the owner of the property in its mechanic's lien. A mistake in name of the owner, however, "will not defeat the lien if no prejudice is caused to the person questioning the validity of the lien." (10 Miller & Starr, Cal. Real Estate, *supra*, § 28:60, p. 195, fn. omitted; accord, *Ah Louis v. Hardwood* (1903) 140 Cal. 500, 504; *Bryan v. Abbott* (1900) 131 Cal. 222, 224; *Frank Pisano & Associates v. Taggart* (1972) 29 Cal.App.3d 1, 19.) Here, Baker established only that a mistake had been made. It made no showing that it had been prejudiced as a result of the mistake. Baker therefore failed to demonstrate, in the first instance, that Action's mistake in naming the owner invalidated the lien.

In summary, Baker failed to demonstrate that Action's mechanic's lien was invalid and that it was entitled to judgment in its favor as a matter of law. We therefore conclude that the trial court erred in resolving this case by way of a summary judgment.

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We observe, however, that the trial court's ruling permitting Action to file a first amended complaint for the purpose of correctly identifying the property to be charged with the lien as 4100 Bandini, rather than 4020 Bandini, is of no aid to Action. An error or omission in a mechanic's lien cannot be corrected by supplying the correct information in the complaint. (10 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 28:58, p. 191.)

The judgment is reversed. Action is awarded its costs on appeal.

NOT TO BE PUBLISHED

SPENCER, P.J.

We concur:

MALLANO, J.

SUZUKAWA, J.*

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.